

United States District Court District **Eastern District of Virginia**
Name (under which you were convicted): **S. Lewis** Docket or Case No.: **2:14-CR-00088-002**
Place of Confinement: **FMCC** Prisoner No.: **51133-083**
UNITED STATES OF AMERICA Movant (include name under which convicted)

v.

Sheila Clark Lewis

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Eastern District of Virginia

600 GRAND Street
Norfolk, VIRGINIA 23510

(b) Criminal docket or case number (if you know): 2:14-CR-00088-002

2. (a) Date of the judgment of conviction (if you know): Unknown
(b) Date of sentencing: 12/8/2014

3. Length of sentence: 24 Months

4. Nature of crime (all counts): 18 USC §1028 (a) (1)

5. (a) What was your plea? (Check one)

(1) Not guilty (2) GuiltyX (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or

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indictment, what did you plead guilty to and what did you plead not guilty to? Guilty as such to indicated

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

Not Applicable

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No X

8. Did you appeal from the judgment of conviction? Yes No X

9. If you did appeal, answer the following:

- (a) Name of court: N/A
(b) Docket or case number (if you know): N/A
(c) Result: N?A
(d) Date of result (if you know): N/A
(e) Citation to the case (if you know): N/A
(f) Grounds raised: N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No X

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No ☒ X

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11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No ☒ X

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(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No ☒ X

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Such action based upon these grounds just became available and the time restraints have just been "forgiven" since the defendants conviction became final.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than ~~four grounds~~. State the facts supporting each ground.

GROUND ONE: Violation of Equal Protection Clause

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
See Attached

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

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Yes No ☒ X

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal Filed

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒ X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Such grounds and action for time relief just became available after defendants conviction became final.

GROUND TWO: Defects of Law

(a) Supporting facts-(Do not argue or cite law. Just state the specific facts that support your claim.):
See Attached

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(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No ☒

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal Filed

(c) Post-Conviction Proceedings:

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(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒ X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒ X

(4) Did you appeal from the denial of your motion, petition, or application?

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Yes No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Such grounds and "forgiveness" of time constraints for filing for such relief just became available after the defendants conviction became final.

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GROUND THREE: Magnitude of Justice

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No ☒ X

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal Filed

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

~~Yes No~~ ☒ X

(2) If your answer to Question (c)(1) is Yes, state:

Type of motion or petition: X

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒ X

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No ☒ X

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

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Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Such issues and relief of such and the time frame in which to file for such relief has just been amended.

GROUND FOUR: Minor Role Participant

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

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Yes No ☒ X

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal Filed

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No ☒ X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No ☒ X

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No ☒ X

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Not Applicable

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Such grounds for relief just became available and the normal time frame for filing for such ahs just been amended.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: All of which is included herein.

14. Do you have any motion, petition, or appeal now pending (~~filed and not decided yet~~) in any court for the judgment you are challenging? Yes No ☒
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Harry Harmon

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? ~~Yes~~ No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No ☒ X

(a) If so, give name and location of court that imposed the other sentence you will serve in the ~~future~~: _____

(b) Give the ~~date~~ the other sentence was imposed: _____

(c) Give the length of the other ~~sentence~~: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you

must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. *

~~Such recent passing of law has made the grounds for filing for such relief and the normal time frame for such has recently been amended to allow for such.~~

Therefore, movant asks that the Court grant the following relief: 1. To have the Minor Role Participant applied to such in order to have the time in which the defendant is serving adjusted accordingly and to have the correct time calculated correctly and accordingly.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on
8-26-16 (month, date, year).

Executed (signed) on 8-26-16 (date).

Sheila Clark-Lewis
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

Ground One: Improper Factor of Consideration

The District Court errors when it gives significant weight to an irrelevant or improper factor. In such case and instance, the court erred when it considered the defendant to be a major role player, leader, or organizer when in fact the defendant was a Minor Role Participant. Such error led to a two (2) to a level four (4) enhancement as a result of such judgment and assumption of such role in the criminal act of conduct. U.S. v Fraga, 704 F.3d. 432, 440 (5th Cir. 2013). Due to this unusual sentencing practice, such requires and warrants closer scrutiny and a remand for resentencing under only the proper factor.

Ground Two: Minor Role Participation- USSG § 3B1.1

The defendant meets the qualifying preset five (5) requirements as set forth in qualifying for such consideration in reduction of sentence as demonstrated by the following:

1. The degree to which the defendant understood the scope and structure of the criminal activity versus her actual small and minimal knowledge of such due to her small role in which she played in such. Therefore, defendant was only aware of "her" conduct and not aware of the entire scheme as an entirety.

2. The degree to which the defendant participated in the overall planning, or organizing of criminal activity, rather than her individual part that she made the conscious decision to partake in. The defendant did not plan, organize or contribute on a large scale of offering to the scheme or act of conduct, but rather on a small indispensable scale and level.

3. The degree upon which the defendant exercised decision-making authority or influenced the exercising of any form or type of decision-making authority other than her own decision to commit her individual acts upon which she accounts for and is solely responsible for those acts and those acts alone.

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4. The nature and extent of the defendant participated in the commission of the criminal activity, including acts the defendant performed and the responsibility and discretion the defendant displayed in performing those acts.

5. The degree to which the defendant stood to benefit from the criminal activity. With the exception of her own individual involvement and the benefit she stood to benefit from that mere act and that act alone, was conclusive. The defendant didnt stand to benefit from furtherance of such criminal act of conduct or schmemme of things involved.

Ground Three: Substantial Guidelines

Due to the crime involved of aggravated identity theft in this case and assuch the defendant was sentencedto a term that ran consecutive to all other pending charges. According to Title 18 § 3564 (b) it is steted and refers to the subsection as well as title section of such criminal procedure law base on the grounds that the Judge has the discretion to run multiple terms, state charges and such concurrent accordingly to all other sentences and given the overwhelming factor of consideration of the circumstances of the act of conduct in this case. It should be noted that the medical condition of the defendant be taken into consideration as such is serious, deteriorating and very expensive to the tax payers of the state (s) involved. Schriver; 542 U.S. at 353.

Ground Four: Violation of Rights

By the way of the bylaws that are given to a defendant under the given section, the defendant in such action and by means of filing of such action has demonstrated that her rights of the defendant have been violated under the Equal Protection Clause, due to the fact that it reflects disparate treatment in this case and of this defendant in comparison to other defendant in similar cases and of the same nature

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and of the same circumstances. Due to this, defendants sentence lacked any rational basis.

Ground Five: Issues of great Magnitude

The defendant in such case intends to prove in such submission of action that not only the sentencing of the defendant in such action was not only unjustified but also lays out many issues of question that given the subject of constitution and / or jurisdictional magnitude. U.S. v Willis, 273 F.3d 592, 595 (5th Cir. 2001).

Ground Six: Miscarriage of Justice

There are many cases in the law which inherently results in a total miscarriage of justice and this is one of those cases. The defendant in such matter will demonstrate many defects of not only the procedural matters and questions of law but also the matters of which went unaddressed and undisputed. The motion in presentation will redress and lay out matters of the fundamental defects that were present in such case through the prosecution of the defendant. U.S. v Addonizio, 442 U.S. 178, 185 (1979).

Ground Seven: In the monumental case of Gall v U.S. , supra 552 U.S. at 41, 128 S.Ct. at 591, the court of appeals **MUST** review **ALL** sentences of defendants whether inside, just outside or significantly outside the guideline range under a deferential abuse-of-discretion standard. Due to the running of sentence (s) consecutive in these matter, the defendant in such manner was denied several rights accordingly.

Ground Eight: Correction of Substantial Reason

Part of the duties of the Circuit Court exist to correct mistakes of again subjective reasoning when they occur. An application of

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review of sentencing and reasoning is proper regardless whether again the sentence is inside or below the minimum standards given by the advisory guidelines according to the crime and defendants criminal history. *U.S. v Cisneros v Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). The District Court abuses its discretion to impose the sentence when it gives the defendant an unreasonable sentence (consecutive) relying in part on the courts disagreement with the guidelines, the enhancement of the act in question without detailed actions of the defendant and the actual act (s) that can be proven in a court and through such given motion of present. *Rita v. U.S.* , 551 U.S.338, 354 (2007).

Ground Nine: 6th Amendment Violation

The amount of jail time that the defendant received has 6th amendment significance and should be given consideration of such and allow for the presentation of the basis and grounds for such evidence to be presented. *Glover v. U.S.*, 531 U.S. 198, 203 (2001).

Ground Ten: 8th Amendment Violation

8th Amendment rules are procedural even though the ultimate source is substantive. *Beard v. Banks*, 542 U.S. 406, 408, 416, 417 (2004).

Ground Eleven: DeNOVO Review

U.S. v Conner, 537 F.3d 480, 489 (5th Cir. 2008). The circumstances, the presenting evidence and missing elements included in the case, which are essential for conviction were NOT present as required. Reasonableness standard of review applies to All cases imposed after Booker under newly discretionary sentence (s) based upon in part or in whole of erroneous facts of law and / or conduct. Such action of the government and the court fails to adequately explain chosen sentence. Quoted accordingly by means of the case in reference,

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"we (court of reference and / or appeals review the District Courts interpretation or application of the guidelines DeNOVO Review and its factual finding or lack thereof for clear error".

Ground Twelve: Hearing Warranted

A hearing MUST be warranted if the motion set forth sets forth specific facts supported by competent evidence raising detailed and controverted issues of fact that if proved at a hearing would entitle the defendant to relief. U.S. v Aiello, 814 F.2d 109, 113-14 (2d Cir. 1987).

Ground Thirteen : Ruling Warranted

Another monumental case of matter and given of defendants filing of motion (s) is the consideration and demand for a ruling under Gonzalez v Supra, 722 F.3d 118, 130 (2d Cir. 2013), quoting 28 U.S.C. sub 2255 "In ruling on a motion under sub 2255, the District Court is required to hold a hearing unless the motion, and the files and the records of the defendant prosecutorial process of the referred to case conclusively and not subjectively show that the prisoner is entitled to no relief"

Ground Fourteen Variance of Circumstances

USSG § 5H1.4 provides the court with the discretion departure of the advisory guideline which guides such sentence due to medical circumstances or other compelling matters involving the defendants sentence, actual acts in question and the circumstances of the scheme of things involved including but not limited to the laws, protection of fundamental rights under the United States Constitution and all other preceeding and present matters of law.

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In conclusion, the defendant of the court mercifully prays that the court will approve the Certificate of Relief in order for the defendant to present evidence or lack thereof that the government as well as the court failed to consider through the judicial process and through the prosecution of the defendant. As a result of this, the defendant was denied fundamental rights that can and will be substantiated through such motion.

Thank - You very much for your time and consideration in dealing with and considering the issue of such in order for the government as well as the defendant to be heard in this matter.

Respectfully Submitted,

CERTIFICATE OF SERVICES

This is to certify that I have served a true and correct copy of the following:

upon the following addresses, by placing same in a sealed envelope, bearing sufficient postage

for the delivery via United States mail Service to: *FMC CARSWELL*
P.O. BOX 27137
FORT WORTH, TX 76127

which was hand delivered to prison authorities on the grounds of the Federal Medical Center,

Carswell in Fort Worth, Texas on this 26 day of August, 2016.

Shelli Clark-Lewis

Litigation is deemed FILED at the time it was delivered to prison authorities. See: Houston v. Lack, 101 L.Ed. 2d 245 (1988).